cine," as that term is used in most, and perhaps all, of the acts upon the subject, yet a person who has not qualified, as required by statute, cannot, if he has made use of the methods ordinarily employed by physicians in the way of examination and diagnosis, escape liability by claiming that he prescribed only proprietary medicines of his own compounding. In the case of *State* v. *VanDoran*, 109 N. C. 864, 14 S. E. 32, this question was raised and the foregoing suggestion is in accordance with the decision of the court in that case. "A vendor of patent medicines," says the court, "who does not pretend to diagnose disease and determine which of his remedies is proper in a particular case, is not a violator of this statute; but that avocation cannot be used to shelter one who is practicing medicine and holding himself out as a physician, and who varies his prescriptions to meet symptoms discovered on his own examination."

An examination of the statutes regulating the practice of medicine will convince one that in many cases they must fail to accomplish the object intended. In several of the states, they are so narrow in their terms as to admit of easy evasion. The fact that they are not identical in requirements and restrictions and the further fact that substantially the same statute is differently construed by the courts of different states must seriously lessen the protection to the public that they are intended to secure. In many cases the ignorant pretender has only to change his residence to be assured, for a time, at least, a free field for his irregular practices. The difficulties of the situation would undoubtedly be largely relieved if uniformity in legislation upon this important subject could be secured. But even uniform legislation would probably need frequent revisions and additions on account of the readiness of many people to accept new theories and new methods in the treatment of disease, without regard to their soundness from the scientific point of view. If people will accept a half truth in the matter of medical treatment, they should be protected by a requirement that the application of the half truth should be by men who have the requisite amount of learning and skill. Osteopathy, for example, was not probably in mind when many of the statutes upon the practice of medicine were framed, but now no inconsiderable number of intelligent people believe in its treatment, and it is perhaps generally acknowledged as effective in some diseases. The osteopathist, although he may not be a medical practitioner under the language of some of the statutes, should be compelled by law to qualify himself to the extent necessary for the intelligent practice of osteopathy. For the protection of the public and the removal of uncertainty and doubt as to the status of those practicing this system, it is suggested that the requirements for the practice should in every state be the subject of special statutory enactment.

AGENCY—LIABILITY OF AGENT FOR NON-FEASANCE.—The interesting and difficult question of the liability of an agent to third persons for injuries caused to them by his negligence in failing to perform duties which he owed primarily, if not wholly to his principal, is discussed in the recent case of *Lough* v. *Davis* (1902), — Wash. —, 70 Pac. Rep. 491. It was alleged that Davis, as agent of a non-resident owner, had complete charge of certain real estate, with full power to rent and repair the same, and was charged with the duty to keep the same in repair and in safe condition for tenants. It was

then alleged that he had negligently permitted the premises to be out of repair, and that thereby the plaintiff, a tenant, was injured. The defendant demurred to the complaint on the ground that if the defendant had been guilty of any default it was in the non-performance of a duty which he owed solely to his principal—in other words that he had been guilty of non-feasance merely—and not of mis-feasance, and that while he might be liable to his principal, he was not liable directly to the plaintiff, whose remedy was against the principal, and not against the agent. The court below sustained the demurrer, but the supreme court reversed it, holding that the complaint stated a cause of action against the agent.

The question involved is an old one, concerning which there is much conflict of authority. It has been held in several cases, involving substantially the same question, that the agent is not liable to the third person, but that the liability is to be enforced against the principal, who may then have a remedy over against his recreant agent. *Delaney* v. *Rochereau*, 34 La. Ann. 1123, 44 Am. Rep. 456; *Carey* v. *Rochereau*, 16 Fed. Rep. 87; *Feltus* v. *Swan*, 62 Miss. 415; *Labadie* v. *Hawley*, 61 Tex. 177, 48 Am. Rep. 278: *Albro* v. *Jaquith*, 4 Gray (Mass.), 99, 64 Am. Dec. 56; *Bissell* v. *Roden*, 34 Mo. 63, 84 Am. Dec. 71; *Murray* v. *Usher*, 117 N. Y, 542; *Henshaw* v. *Noble*, 7 Ohio St, 226; Story on Agency, § 309; Ewell's Evans on Agency, 329, 334. On the other hand, there is a line of cases holding the agent directly liable in such cases, to the person injured. Of these, the most conspicuous are: *Campbell* v. *Sugar Co.*, 62 Me. 552, 16 Am. Rep. 503; *Baird* v. *Shipman*, 132 Ill., 16, 23 N. E. 384, 7 L. R. A. 128, 22 Am. St. Rep. 504; *Ellis* v. *McNaughton*, 76 Mich. 237, 42 N. W. 1113, 15 Am. St. Rep. 308; *Mayer* v. *Building Co.*, 104 Ala. 611, 16 So. Rep. 620, 28 L. R. A. 433, 53 Am. St. Rep. 88; *Nunnelly* v. *Southern Co.* 94 Tenn. 397, 29 S. W., Rep. 361, and the Washington case above referred to. Two important Massachusetts cases,—*Bell* v. *Josselyn*, 3 Gray, 309, 63 Am. Dec. 741, and *Osborne* v. *Morgan*, 130 Mass., 102, 39 Am. Rep. 437,—are doubtless to be regarded as distinguishable from *Albro* v. *Jaquith*, supra.

The difficulty in the matter lies in determining whether the agent owes any duty to third persons. There clearly can be no liability to third persons unless there was a duty owing to them. That the duties which arise out of the agency relation merely, are owing primarily and wholly to the principal, can scarcely be doubted. Many cases, which might be cited, establish this, unless they also are to be regarded as unsound. Thus, for example, one who purchases real estate in reliance upon an opinion as to the title given to the vendor by the latter's attorney, or who purchases a mortgage upon the strength of a search made by the attorney of the original mortgagee, cannot maintain an action against the attorney if the title proves defective or the search incomplete. *Savings Bank* v. *Ward*, 100 U. S. 195; *Dundee Mortg. Co.* v. *Hughes*, 20 Fed. Rep. 39; *Houseman* v. *Girard Ass'n.*, 81 Pa. St. 256; *Fish* v. *Kelly*, 17 Com. B. (N. S.) 194. Does the fact that the agent is put in control of property impose upon him a duty, not simply as agent, but as possessor, custodian, controller, to see that the property so controlled by him is not so managed as to cause injury to others? If it does, and he neglects his duty, he is liable, not as an agent, but on the broader ground above referred to; and the fact that he also owed a special duty to his principal is

immaterial. That he does owe such a duty can scarcely be doubted, and his failure to perform it, though it may be regarded as non-feasance so far as his principal is concerned, is clearly mis-feasance so far as the third person injured by it is concerned.

CONSTITUTIONAL LAW—BIBLE READING IN THE PUBLIC SCHOOLS.—The interesting and important question, whether a taxpayer and patron can prevent the reading of the Bible in the public schools, was involved in the recent case of *State* v. *Scheve* (1902), — Neb. —, 91 N. W. Rep. 846. The constitution of Nebraska provides that no person shall be compelled to support any place of worship against his consent, and also that "no sectarian instruction shall be allowed in any school supported, in whole or in part, by public funds." In a certain district the board permitted the teacher to engage daily, during the school hours, in opening exercises, consisting of reading from the King James' version of the Bible, singing religious hymns, and prayer. The action was an application for mandamus, by a patron and taxpayer, to require a discontinuance of the practice. The court held that these exercises were in violation of the relator's constitutional rights, and should be discontinued. A majority of the court were of opinion that the constitutional provisions referred to were violated in two ways—first, that these exercises constituted religious worship, and thus required the relator to support a place of worship; and, second, that they constituted sectarian instruction within the meaning of the constitutional provision. A minority of the court differed as to the first point, but concurred as to the second.

The same general question has several times been before the courts, and their decisions are not altogether harmonious, though the disagreement is more apparent than real. Much, of course, must depend upon the particular phraseology of the constitution involved. The question came before the supreme court of Wisconsin in 1890, in the case of *State* v. *District Board*, 76 Wis. 177, 44 N. W. 967, 7 L. R. A. 330, 20 Am. St. Rep. 41. The constitution of that state contains numerous provisions to insure religious liberty, but especially, two provisions identical with those involved in the Nebraska case, namely, that no one should be compelled to support any place of worship, and that no sectarian instruction should be allowed in the public schools. The complaint was that the board permitted the teachers to read daily, during school hours, extracts from the King James version of the Bible, selected by the teachers. The court here also held that such Bible readings constituted religious worship, and thus made the schools a place of religious worship within the meaning of the constitution, and also constituted sectarian instruction. It was further held that it was immaterial that pupils who desired to do so, might withdraw during these exercises.

Practically the same question was before the supreme court of Michigan in the case of *Pfeifer* v. *Board of Education* (1898), 188 Mich. 560, 77 N. W. 250, 42 L. R. A. 536, where the relator sought to restrain the use in the public schools of a book made up of selections from the Bible. The constitution provided that no one should be required to attend or support any place of religious worship, or to pay taxes for the support of any minister of the gospel or teacher of religion, but it did not contain the prohibition, found in Wisconsin and Nebraska, against sectarian instruction. There was, however,